Supreme Court, U.S.
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No. 97-

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

ABDUL AZIZ,

Petitioner,

v.

RODNEY E. SLATER, SECRETARY,
DEPARTMENT OF TRANSPORTATION,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

ABDUL AZIZ, PH.D.
Petitioner Pro se
9179 Springhill Lane
Greenbelt, Maryland 20770-1245
(301) 513-9164/0453

49 pp

PREFACE

The employer **advertised six** qualifications for the position. But, he used **nine additional unadvertised** qualifications to evaluate the **abilities** of the applicants. And, the employer placed **more weight on unadvertised qualifications than on advertised ones.**

ADEA of 1967, PL 90-202, SEC. 2. (b) says, "It is therefore the purpose of this Act to promote employment of older persons based on their ability rather than age;" **"Ability"** mentioned here refers to **qualifications** in case of white color workers, and **skills** in case of blue color workers.

QUESTIONS PRESENTED

(1). Whether or not the above law permits the employers to use unadvertised qualifications.

(2). Whether or not the above law permits the employers to place more weight on unadvertised qualifications than on advertised ones. For example, 80% on unadvertised qualifications and 20% on advertised qualifications.

(3). Whether or not the court has decided the Federal Rule of Civil Procedure 56 (c) in a way that conflicts with the relevant decision of the Supreme Court, cited in the SEC. III . 2 .

(4). Whether or not the petitioner was deprived of his Fifth Amendment Constitutional rights of due process of Law.

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In The
SUPREME COURT OF THE UNITED STATES
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Abdul Aziz, Ph.D. ,
Petitioner Pro se,

v.

RODNEY E, SLATER, SECRETARY,
DEPARTMENT OF TRANSPORTATION,
Respondent.

I . PETITION FOR WRIT OF CERTIORARI

Petitioner, Abdul Aziz, Ph. D., a citizen of the United States of America does, hereby, petition this court to grant a writ of certiorari to review the judgement of the United States Court of Appeals for the First Circuit, and District Court of the District of Columbia.

1. OPINIONS BELOW:

The opinion of the district court on the question no. 3 is that the plaintiff has produced no evidence to infer age discrimination, exh. 1, page 1a. The opinion of the appeals court is that the petitioner did not show that the respondent's proffered reason was a pretext, exh 2, page 5a..

The petitioner's opinion is that (i) neither the district nor the appeals court has addressed the issues raised by the questions nos. 1, 2, and 4; (ii) these courts have not complied with or their actions challenges PL 90-202, SEC. 4. (a) (1) and`

PL 90-202, SEC. 2. (b), (iii) and the district court decided Rule 56(c) in a way that conflicts with relevant Supreme Court's decision. Further, the petitioner's opinion is that the use of unadvertised qualifications and placing more weight on them than on advertised ones are an unlawful employment practice, because they have led to an unlawful discrimination of the petitioner. And the petitioner's opinion also is that the respondent has invented and perfected a scheme by which he can hire any one of his choice, and unlawfully discriminate any person of the protected group he wants. Petitioner's opinions have been substantiated with documented facts and evidence.

2. ISSUES BELOW:

Petitioner's issues are: **(a)** A less qualified person was hired, **(b).** Petitioner was discriminated, **(c)** Petitioner was discriminated because of his age. Records show that petitioner was older than the selectee by 20 years. The court has only one issue, and it is that the above issues **(a) , (b), and (c)** are irrelevant. The only relevant issue is that the petitioner has produced no evidence to infer age discrimination. In its memorandum of order, exh. 1, page 1, it has discussed nothing but its issue.

3. THE CONFLICT BELOW:

The petitioner believes that there are three essential elements in a discrimination complaint, **(a), (b), (c)** listed in the paragraph above. The court believes that there is only one essential element, ie., the production of evidence to infer age discrimination. This conflict can only be resolved by the highest court in the land. **This is the conflict that exists in 100 percent age discrimination cases.**

4. JURISDICTION:

1. The date of the judgement to be reviewed was entered on Oct 29 1997, exh. 1, page 1
2. Jurisdiction is conferred upon the Supreme Court by Rule 10(c).

(i) A United States appeals court has decided important questions of federal laws that have not been, but should be, settled by the Supreme Court, and
(ii) it has decided an important federal question in a way that conflicts with the relevant decision of the Supreme Court.

3. Question Nos. (1), (2) & (4) fall under jurisdiction 2. (i), and question No. (3) fall under 2. (ii).

Part 1

II . BACKGROUND:

HOW THE CASE REACHED THE SUPREME COURT.

1. The employer advertised the position, exh. 1. in Appendix on page iii. The petitioner applied for the same within the due date. Employer failed or refused to hire him. Petitioner believed that despite his qualifications he was not hired, because of his age. He was older than 40 and much older than the selectee. After exhausting administrative remedies, the petitioner filed a suit to the US District Court for the District of Columbia. In this case exhausting remedy was simply to give a one month notice to the Civil Rights Office.

2. The petitioner was given the evaluations of the qualifications of the selectee, exh. 7, and the petitioner, exh.8, made by the employer. **Petitioner reviewed these evaluations**

and found that he scored higher than the selectee on the six qualifications advertised.

3. The petitioner had submitted requests for important discoveries. The respondent filed a motion for summary judgement to dismiss, and a motion for stay of discoveries. The court granted the stay, and summary judgement to dismiss. Thus the petitioner was not given discovery and a trial. **"no discovery has taken place at all," said the court in court in the order of May 7, 1997, page 8, line 12.**

4. Petitioner filed an appeal to the appeals court. The respondent filed a motion for summary affirmance and for an expedited summary affirmance. The appeals court granted respondent's expedited summary affirmance, exh. 6, page 38,. Appeals court did not review the petitioner's appeal. **The petitioner got neither the trial by the district court nor the review by the appeals court.** THUS, THE CASE HAS REACHED THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

III . SUMMARY JUDGEMENT WAS NOT APPROPRIATE

1. In his appeal brief, petitioner claimed that the district court's summary judgement was not appropriate because the plaintiff's issue -- that a less qualified person was selected -- is precluded pursuant to FRCP 56(c). The Appellee did not dispute this issue but he raised a new issue that "the selectee was more qualified". Now, this is another issue which is also precluded pursuant to FRCP 56 (c). These two issues clearly contradict each other and therefore cannot be settled by the district court as a matter of law. **Actually the district court**

did not settle them, nor tried to settle them.

2. The United States Supreme Court has delivered an opinion on FRCP 56(c). The relevant part of that opinion is quoted below for ready reference:

...[T]he plain language of Rule 56(c) mandates the entry of summary judgement, after adequate time for discovery and upon motion, against a party who fails to make sufficient showing to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact'.

3. The opinion of the Supreme Court has three phrases:

(i) "after adequate time of discovery", (ii) " an element essential to that party's case, (iii) "on which the party will bear the burden of proof, at trial ."

4. For (i) : Adequate time was not given to plaintiff for discovery . In the word of the court, "no discovery has taken place at all," court order of May 7, page 8, line 12.

5. For (ii) :In the present writ there are two elements essential to the petitioner's case under ADEA of 1967, PL 90-202, SEC. 4. (a), which states,

> "It shall be unlawful for an employer, (1) to fail or refuse to hire any individual ....., because of such individual's age.

7. The two essential elements are:

(1) Employer to fail or refuse to hire any individual
(2) because of such individual's age.

8. The plaintiff elects to make sufficient showing on element (1) to survive summary judgement. Element (1) is subdivided in to three elements. (i) The plaintiff applied for the position. (ii) He was qualified for the position. (iii) Despite his qualifications, he was not hired.

9. The plaintiff has made a sufficient showing to establish the existence of all the three elements essential for his case. For example, (1) (i): His application is on file. (1) (ii): His resume shows that he was qualified. In its order of May 7, 1997, page 6, line 4, "the court concludes that plaintiff has produced enough evidence to support prima facie case at this stage." The respondent did not say that plaintiff was not qualified. (1) (iii): The employer's notification that plaintiff was not hired is also on file. Thus., plaintiff has made sufficient showing . **That the selectee was not more qualified is the burden of proof of the plaintiff "at trial".**

10. Because the plaintiff did not fail to make sufficient showing in one element, there is at least one genuine issue for which the respondent is not entitled to a judgment as a matter of law. **Therefore, the district court decided the summary judgement to dismiss in a way that conflicts with the Supreme Court interpretation of FRCP 56 (c).**

IV. SUMMARY AFFIRMANCE WAS NOT APPROPRIATE .

Since the summary judgement by the district court was not appropriate, and since the summary affirmance by

the Appeals Court was solely based on the summary judgement of the district court, the summary affirmance by the appeals court was not appropriate.

V. WAS EMPLOYER'S PROFFERED REASON A PRETEXT ?

1. Ages and the comparative scores of the five finalists are shown in table 1 below: It shows that Dr. Dixon is 65 years old, oldest of all; and scores the highest, 8.53. Yet, he was

TABLE 1

Names:	Layton	Capobianchi	Starms	Walters	Dixon
Scores	7.56	7.22	7.01	8.40	8.53
Ages	26	36	38	43	65

not hired. **Conclusion: the employer did not base his selection on the applicant's scores.** If he did, Dixon, who has scored higher than the selectee would have been hired. But, he was not. **So, by PL 90-202, SEC. 2. (b), Dixon was discriminated, because of his age. This is a direct proof of age discrimination.** No indirect proof such as a pretext, was required. Petitioner will also use the direct proof of age discrimination, if a trial is granted. And would have used the same if a trial was granted. The Supreme Court opinion on 56 (c) does not say that plaintiff must use 'pretext' to make a sufficient showing. The respondents's proffered reason is a defense to the allegation -- selectee was less qualified -- for which **the plaintiff bears the burden of proof, at trial.**

'A defense is a pretext' is not a logical statement because if it were plaintiff would receive summary judgment in his favor.

Further Reasons:

1. The respondent did not file its answer to plaintiff's

summons with the complaint. This was brought to the attention of the court , but it took no action. The petitioner had an allegation -- a less qualified person was hired. Since the respondent did not answer plaintiff's summons, thus the allegation was never answered.

2. The respondent filed its first motion to dismiss within two months from the last date to answer the summons and before the discovery conference meeting Rule 26(f).Had the respondent answered the complaint which consists of the allegation above, the respondent would have to answer, "The allegation denied." If it did so, its proffered reason will be a denial. Now it seems, respondent's not answering the complaint was a trick and a part of his scheme. Certainly, the plaintiff must not be asked to prove that a denial is a pretext. If it were, all the cases will have the same pretext.

VI .THE DISTRICT COURT HAS MADE MANIFEST ERRORS:

1. FRCP 56(c) is a test whether the issue -- a less qualified person was selected -- could be settled, **as a matter of law.** The court did not address if this issue could be settled as a matter of law. **Thus it was a manifest error by the court.** To make it clear, there are two issues: (i) a less qualified person was hired and, (ii) if the no. (i) issue could be settled as a matter of law. The court did not address either issue. It addressed the issue, if there is evidence of age discrimination. It did not address the right issues. Thus it was a manifest error by the honorable court.

2. The court made another manifest error. It did not use the Supreme Court decision on FRCP 56 (c) to make the summary judgement. So, its decision conflicts with the relevant Supreme Court decision.

VII. MERITS OF THE CASE

Because expedited summary affirmance was granted on the

basis of merits on the case, it is necessary for the petitioner to briefly discuss them here.

A . Merits On Qualifications:

1. The petitioner's case is that the employer failed to hire him because of his age, despite his qualifications. The employer's proffered reason for not hiring the petitioner is that the selectee was more qualified. **The employer's advertised six and unadvertised nine qualifications are show in exh. 2.** (All exhibits are tabulated in Appendix on page iii.)

2. Tables 2 & 3 below show the scores of plaintiff and selectee **when only advertised qualifications are considered.** Plaintiff's scores are in Table 2 as rated by the employer. There is no error. The selectee's scores in Table 3 shown under the 3rd column are those that have been arithmetically corrected by the plaintiff, and under the 4th column that are rated by employer with many deliberate errors. The errors would have been caught by eyes if only the employer would fill the rating sheet of the selectee, exh. 7 as completely as the plaintiff's rating sheet, exh. 8. If the deliberate errors are eliminated from the 4th column, it reduces to the 3rd.

TABLE 2: Plaintiff's Scores

Qualifications	Weight	Plaintiff Scored
1. Degrees	10	11
2. Industrial Experience	4	4
3. Teaching Experience	6	6
4. Courses Taught, and	8	8
5. Project Supervision	4	3.2
6. Innovation	2	1.2

Total (scores)	**34**	**33.4 (98.24%)**

Letter Grade = A+

TABLE 3: Selectee's Scores

Qualifications	Weight	Selectee Scored 3rd col.	4th col.
1. Degrees	**10**	**7**	**9***
2. Industrial Experience	**4**	**2**	**4***
3. Teaching Experience	**6**	**3.6**	**6***
4. Courses Taught, and	**8**	**7.2**	**8***
5. Project Supervision	**4**	**2.8**	**2.8**
6. Innovation	**2**	**1.6**	**1.6**
Total (scores)	**34**	**24.9 (73.24%)**	**31.4 (92.35%)**
Letter grade		**C-**	**A-**

A1. Conclusion 1: petitioner scored higher than the selectee. Yet the selectee was hired, but not the petitioner. So, the petitioner was discriminated.

B. Merits On Laws:

1. Public Law (ADEA) 90-202, SEC. 2 (b) says,

> **"It is, therefore, the purpose of this act to promote employment based on their ability, rather than age;"**

From the merits of the case above **on qualifications,** it is

* These scores are in error deliberately made to elevate selectee's scores.

So the employer has cheated the petitioner.

seen that the petitioner's score was higher.

B2. Conclusion 2: The employer did not base his decision on the abilities, but on the ages. So, Petitioner was discriminated because of his race.

2. According to SC's opinion quoted earlier, the two elements essential to petitioner's case are:
(1) Employer to fail or refuse to hire any individual, (2) because of such individual's age.

3. On both of these elements, it is seen from the discuss in SEC. VII, that the merits of the parties' case are heavier in favor of petitioner. But the respondent, without conceding a defeat, may argue that in the above computation of scores, the unadvertised qualifications have not been included. **This is a strong argument if PL 90-202, SEC. 2. (b) permits the employer to use unadvertised qualifications. This is why the opinion of the Supreme Court is sought that will eliminate the dispute for good and for all cases to come.**

4. Discriminatory use of test scores has been prohibited by U.S.C. § 2000e-2 (l). Cheating in scores in table 3 has led to the petitioner's discrimination. So, use of these scores has been discriminatory, a violation of the above code.

VIII. EVEN, EXPEDITED SUMMARY AFFIRMANCE WAS NOT APPROPRIATE.

1. Expedited summary affirmance is appropriate when merits of the case are strongly in favor of the petitioner or the appellee. But as shown in SEC. VII, at page 8 of this

petition, the merits of the case are overwhelmingly in favor of the petitioner. So, expedited summary affirmance, for which petitioner also moved, should have been granted in favor of petitioner's motion, not appellee's. **Thus, expedited summary affirmance was, also, not appropriate.**

IX . HOW THE RESPONDENT BYPASSED THE DUE PROCESS OF LAW.

STEP 1. This case, being against the United States Government, was not investigated by EEOC. So, by this built in procedure in the system, the respondent bypassed the EEOC investigation, which is thorough. As required, the petitioner served a one month's notice upon Civil Rights Office. The petitioner got no response from the Civil Rights Office. Thus, the respondent bypassed the first step in the due process of law.

STEP 2. The District Court, ordered a stay on petitioner's discoveries already filed, and ordered the petitioner not to file any more discoveries, any motions and any papers of any kind. Ref: Exh. 3. By this court order the respondent bypassed the discoveries, the second step in the due process. However, the court had its own discovery, known as limited discovery, executed through petitioner against his will, calculated to discover evidence in favor of the respondent. But this did not serve its calculated purpose. As a result of this discovery, the petitioner received the resumes and score sheets of the five finalists. He had previously received his own score sheet.

STEP 3. The results of these discoveries were sent to the

court, exh. 5. When the court received the exhibit, it concluded that petitioner was not discriminated, and granted defendant the summary judgement to dismiss without resolveing the issue, whether or not the selectee was less qualified as a matter of law. Thus, the respondent bypassed the trial, the third step in the due process.

The courts did not see that in order to establish, "Aziz was not discriminated because of age," the respondent must establish that Aziz was not discriminated. And in order to do so, it must first establish that Aziz was less qualified. The respondent did not do so, and the court, even, did not address the issue, 'if Aziz was less qualified ?' **Thus, the respondent was able to bypass the trial.**

STEP 4. When petitioner, thereafter, appealed to the appeals court, the respondent filed a motion for summary affirmance, and immediately filed another motion for expedited summary affirmance. The appeals court, granted respondent an expedited summary affirmance, without reviewing the appeal. **So, the respondent was able to bypass the review of the appeals court, the fourth and the final step in the due process before it reaches the SC.**

Part 2
X. ARGUMENTS BEFORE THE SUPREME COURT FOR ITS CONSIDERATION TO REVIEW THE WRIT OF CERTIORARI.

A. Arguments on Jurisdiction, Rule 10 (c).

1. The District of Columbia Circuit Court of Appeals has decided important questions of Federal Laws that have not been, but should be, settled by the Supreme Court of the

United States. This jurisdiction, Rule 10 (c)., has been met by the petitioner.

2.The questions of federal laws those which have not been, but should be, settled by the Supreme Court in the instant case, are of such nature and magnitude, and found to occur so frequently that they encompass a very large number of the discrimination complaints. And make the greatest loophole in the law. **So, a decision by the Supreme Court of the questions presented on page i will benefit a very large number of vulerable people in all bases,** by plugging the loophole once for all. About or more than 50 percent of population are women, about 20 percent are are other minorities those come under the proteccted group. Therefore, about 70 percent or more are vulnerable discriminaton and will be affected by the SC's resolution of the questions presented.

B . Arguments on question (1) . Whether or not the PL 90-202, SEC. 2. (b), permits employers to use unadvertised and unnamed qualifications.

1. The petitioner applied to more than 100 employers during October 1994 -1996. But he got no job. By age he was 63, by national origin, he was Bangladeshi and by race he was an Indian. He came to firmly believed that he was discriminated against because of his age, race and or national origin. So, he filed discrimination complaints, a total of about fifteen.

2. From the responses of the employers, such as the one in the instant case, he estimated that about 75% of the employers have used unadvertised qualifications. For examples:

No. 1. Petitioner applied to St. Martins College, Lacy. WA,

for the position of an Asst/Assoc. Professor of Mechanical Engineering. He did not get the job. The employer's proffered reason was that the petitioner had made some typographical errors in his application.The qualification for typing was not advertised for the position. This case is in the 9th Cir. Appeals court.

No. 2. Petitioner applied to the Pennsylvania State University (Berks Campus) for a similar position, but he did not get it. The employer's proffered reason was that their need was for a manufacturing engineer. But he employer advertised for a mechanical engineer both nationally and internally. This is also the case of unadvertised qualifications. The employer's advertisement is a concrete documentary evidence.

No. 3. Petitioner applied to the Penn State York Campus for the Director of the Mechanical Engineering Technology Program. The employer advertised three qualifications, required, preferred and desirable; But instead of using them , it used more than 20 unadvertised qualifications (not required, not preferred and not desirable). The case is in the 3rd Cir. appeals court.

No. 4. The petitioner applied to the Tri-State University, Angola, Indiana for the position of the Chairman of the Mechanical/Aerospace Engineering Department.The situation was the same.

3. The petitioner concludes that most of the employers deny employments to minorities by using unadvertised qualifications. So, the impact of "**unadvertised qualifications**" is very wide all across the whole United States. Petitioner fears that if this practice is not effectively checked in time, the 18President Clinton's declared aim for better racial harmony

will never materialize. The present case is against the Federal Government, the largest employer in the United States. The damage is unlimited. If the employers are allowed to go on using unadvertised qualifications, then gradually and ultimately all the employers will come to know of the US Coast Guard Academy practices and tricks, and begin to use them themselves. T h e n , the damaged will be out of control.

4. For unspecified or unnamed qualification such as the 15th qualification in exh. 2, its impact alone is sufficient to make an otherwise better qualified candidate to lose. In the present case the employer, US Coast Guard Academy, was clever enough to place very weight on this qualification and gave the selectee full credit and the petitioner a zero resulting in the loss of petitioner. The Coast Guard Academy has been so clever to design the rating sheet, exh. 8, that can make any candidate defenseless unless he is very smart to uncover his scheme. The employer has the defense to the court that it is the employer's decision to set the standard of examination and grading. **This time the Supreme Court has the question No. 1 to decide.**

5. One of the needs for enacting all the discrimination laws was the national interest for maintaining productivity in an affluent society, and free flow of goods. So, if discrimination is not eliminated or curbed our national interest is compromised.

C. Arguments on question (2). Whether or not PL 90-202,SEC. 2. (b) permits placing more weight on unadvertised qualifications than on advertised ones. For example, 80% on unadvertised qualifications, and 20% on advertised qualifications.

1. If an employer is allowed to place more weight on unadvertised qualifications than on advertised ones and in any proportion he wants; and since the employer has the prerogative to have its own decision to select criteria for qualification requirements, then he will place more weight on unadvertised qualifications and can select a proportion to discriminate a minority at its will. Fallen in to this situation, no minority is safe from being discriminated. And ADEA of 1967 and Title VII of Civil Rights of 1964 will be rendered inactive.

2 . There is a big loophole again. Now, before the Supreme Court is the question No. (2) above.The suggested answer by the petitioner are:

No. 1. No unadvertised qualifications shall be used in the above law to base the employers' decision on the ability of the candidates. This will totally close this loophole for good, but it will not take away the employers' right of its discretionary power, because the employer can advertise all the qualifications on which he wants to base his decision. **But he must do so at the time of advertisement, but not at the** time of the selection of the candidates. For lack of funds for a more expensive advertisement, the employer can send a preprinted position announcement, listing all the qualifications, to those who apply for the job. Many employers do so.

No . 2 . No employer shall exceed a proportion of unadvertised to advertised qualification = 10% This proportion will help many cases, but not all cases. So, No . 1 . answer is the only answer to enforce SEC. 2. (b). It is as strong a decision as "Equal but separate is not equal".

D. Arguments on question No. (3) . Whether or not the

district court has interpreted the Federal Rule of Civil Procedure 56 (c), in a way that conflicts with the relevant decision of the Supreme Court, cited in the SEC. III. 2.

1. It seems, neither the defense lawyers nor the courts have a good grasp of FRCP 56 (c). Instead of finding if the issues are triable, the courts try the issues on paper. This is the first error the courts make. The second error the courts make is that they look for evidence of discrimination first, they do not look for if the employer based his selection on the abilities of the candidates. If they did and found that employer did so, the complainant was not discriminated. If the complainant was not discriminated, the question of evidence of discrimination does not arise. But if he was discriminated by law, PL 90-202, SEC. 2.(b). he was discriminated because of his age. The laws says, if a complainant belongs to a protected group, he/she cannot be discriminated. Therefore, the employer must establish that the hired the best candidate on the basis of qualifications. And only one way the complainant can win his case is to prove that he was best qualified on the basis of all the qualifications advertised

2. In a pretrial conference, in the chamber of Judge Economus in the district court of Ohio at Youngstown, the judge asked , "How are you going to run the case ? Are you a lawyer ? Do you know any laws ?" But he did not expect me to answer. So, immediately turning to the defense attorney, Ms. Pierce-Geally, the honorable judge asked, " How many candidates applied for the position ? "Fifty six." replied the counsel. Then, turning toward me, the honorable judge asked , "Could the employer hire all the 56 candidates ?" But he did not again expect an answer from me. So, I did not answer. But I thought in my mind, ' this judged is either totally ignorant of

"discrimination and discrimination laws, prejudiced against minorities, or does not know that discrimination still exists. With permission of the honorable court, I asked, "Your honor, do you believe discrimination still exists ?" He took some time and said, " I am not going to answer that question". If this is the calibre or the attitude of a court, how can it make a judicial decision? As a result, most of our complaints are lost by summary judgements. **And the district courts decide the FRCP 56 (c) in a way that it conflicts with the SC decision.**

E . Arguments on Question (4). Whether or not the petitionr was deprived of his Fifth Amendment Constitutional rights. Arguments are provided in SEC. XIV.

F. Arguments on Discrimination. What is discrimination and what is age discrimination.

1. **What is the evidence of discrimination ?** The only evidence available are the petitioner's and selectee's resumes, the basis for the employer's decision. Therefore, whatever evidence of discrimination are there, must be existent in these and only in these documents. Qualifications of the two candidates from these documents must be compared in order to evaluate who was better qualified. If petitioner is found to be better qualified, then he has been discriminated. **This finding is the evidence of discrimination,** by the definition of the word "discrimination", shown in paragraph 3 below.

2. "What is the evidence of *age discrimination.* On reading ADEA of 1967 more carefully I discovered that the various sections of it give the 'meaning of discrimination' and 'evidence of discrimination'. They are cited and explained below:

3. It may be noted that the lawmakers did not define the word 'discrimination' before it is being used in PL 90-202, SEC. 4. (a) (1). Therefore, the word 'discrimination' has been used here to convey its daily used dictionary meaning. WEBSTER'S II New Riverside Dictionary defines the verb "discriminate" as

1.To distinguish between things : differentiate. 2. To act prejudicially.

4. We take the meaning "differentiate" which is, perhaps, to be most commonly known to all the members of the jury. From the above finding and declaration, it is clear that it says "If an employer has not based its hiring decision on the qualifications of the candidates, then it has based its decision on their ages. So, an employer has two choices for its hiring decision. (i) to base his decision on the qualifications of the candidates and (ii) to base his decision on their ages. There fore, if the employer does not base its decision, to hire, on the qualifications of the candidates, then he has based his decision on their ages. **This was the evidence of age discrimination then. This is the evidence of age discrimination now. The evidence has not changed since then. And there is no reason a change.**

X. THE EMPLOYER HAS CHEATED THE PLAINTIFF.

1. The following information are quoted from the original rating sheet (Spreadsheet) prepared and graded by the employer for the selectee. The information against number 1 qualification, degree, exh. 2 are:

Qualifications met	Predetermined Scores
(a) Ph.D. in ME w/ MS in ME with BS in ME	11

(b) Ph.D in ME with MS in ME	10
(c) Ph.D (related) with MS in ME	8
(d) MS in ME + Ph.D. pursuit	7
(e) MS in ME	6

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2. The selectee has an MS in ME + Ph.D. pursuit. So, the selectee should receive a score of 7 according to the employer's predetermined scores. But the employer gave him a score of 9, in table 3, page 9. This score is also seen in exh. 7, against row 1 under column 9. Please note that the clever employer has not circled any predetermined score in exh. 7 for the selectee, but he did so in exh. 8 for the petitioner.

3. Just like bad guys in TV, movie or in real life [I am presenting arguments) do not think they will be caught, similarly this employer, US Coast Guard Academy, did not think that it will be caught. I agree that the employers have the write to make any decision to set the standard of examination and evaluation. I also believe that the highest court in the land must know that cheating in grading applicants is a crime for the employer. This is the extent to which an employer will go to discriminate a minority applicant and violate a Federal Law. If I am granted a trial I shall enquire through discovery if the selectee was pursuing Ph. D. If he did not he should have a score of 6 and not 7.

This is an example of errors made deliberately by the employer. (If my credentials are thoroughly reviewed, it will be seen that in my work I have detected the most difficult errors made by Consultants of competing firms.)

XI. THE EMPLOYER HAD A SCHEME.

1. The employer advertised six qualification requirements, ie., degrees, industrial experience, teaching experience, courses taught, project supervision and innovation. However, he has used an additional nine unadvertised qualifications, including one unnamed qualification, at the time of evaluating the qualifications of the applicants, exhs. 7 & 8. Had the employer used only advertised qualifications, then according to the employer's own evaluation, petitioner would have received a much higher score as shown in Tables 2 & 3 on pages 9 & 10. **Thus petitioner was the better qualified.**

2. But the employer did not want an older person for the job. So, he brought in additional nine qualifications not advertised, not required, not preferred and not desirable. Not only he did so, but also he placed more weight on these nine unadvertised qualifications than on six advertised ones. He placed a total weight of 34 = 47% on the advertised qualifications; and 38 = 53% on the unadvertised qualifications, exh. 2. Placing more weight on unadvertised qualifications, employer was able to shift the balance in selectee's favor

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3. The employer made deliberate mathematical errors in numbers of the rating sheet of the selectee because he could then show a higher score for the selectee. The person selected was younger than petitioner by more than 20 years.

4. The employer did not fill up the selectee's rating sheet, exh. 7 as completely as the petitioner's rating sheet, exh. 8 , because then he could hide his deliberate mathematical errors.He did not fill up the last column and circle the assigned score in selectee's rating sheet, ex. 7. And because

he was prejudiced against minorities that minorities are not intelligent, and thought, then, no minority applicants will understand his method and, therefore, will not be able to catch his deliberate mathematical errors.

5. The employer transformed a simple ordinary day of computing method in to an unintelligible complex method, prepared a software and used a computer, to make it more difficult for someone to catch his deliberate errors. Not being sure that it was enough, the employer left the 15th qualification unnamed, exh. 2, and placed very heavy weight on it, gave full credit to selectee and zero to petitioner. That was the scheme of the employer and by synthesizing the different eements of the this scheme he was able to put a false number for the selectee's final score of 8.4, exh. 7.

6. This scheme was a fraud.

According to Blacks Law Dictionary these actions in XI constitute a fraud. It was a computer fraud, because a computer was used in the fraud. Had he not used a computer in computing the scores of the candidates in a deliberately devised a complex method leaving deliberately a simple method used by the petitioner in this case, and by teachers of schools, colleges and universities from time immemorial, then it would not be a computer fraud

7. It was a conspiracy because more than one person participate to design the scheme and make it work .

8. With this weapon he gave 8 points out of 8 points to the selectee, exh. 7, and gave zero to petitioner, exh. 8 on the 15th qualification, making the selectee win by a big margin. He named the 15th qualification as "other", exh . 2, so unnamed. Thus he could bring any qualification. By bringing

in any qualification as "other" and putting 90 per cent weight on it he could make any one he desires to score the highest. Hypothetically speaking , biased employers could make a foot ball player score the highest and become the Assistant Professor of Mechanical Engineering. Potential damage to the society is unlimited.

9. According to Black's Law Dictionary these constitute a fraud.

Part 3
XII . THE COMPELLING REASONS FOR THE SUPREME COURT TO REVIEW THE PETITIONER'S WRIT OF CERTIORARI.

1. PL 90-202, SEC. 4. (a) (1) is:

> It shall be unlawful for an employer to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

It is clear that this law defines discrimination and makes discrimination unlawful when an employer discriminates an applicant because of his age. It is a simple interpretation.

2. PL 90-202, SEC.. 2. (a) (b) is:

> The Congress hereby finds and declares that: It is therefore the purpose of this Act to promote employment of older persons based on their ability rather than age;

This Act supports the other, it clarifies "because of". It says that if the employer has not based its decision on the qualifications then he must have based his decision on the age, it eliminates the ambiguity of the phrase "because of". It gives the employer only two choices. It is also a simple interpretation.

3. This district court and all other district courts in the entire country are not applying these two simple laws in adjudicating discrimination complaints by the hypothesis that the applicant must display evidence to infer age discrimination regardless whether the selectee was less qualified. These two laws and the Supreme Court opinion cited do not require "evidence to infer". If the petitioner's writ of certiorari is granted and the district courts are ordered to comply with these two laws, then more than 70 per cent of the US popu lation be benefitted and the country will be prosperous and race relations will be better. This is a compelling reason.

4. The second compelling reason is to have an SC opinion on unadvertised qualifications and on placing of more weight on them, otherwise there will be no limit of damage to the minority and to the nation as a whole.

5. The third compelling reason is to promote employment by requiring all district courts to use the cited SC opinion in their adjudication of summary judgements.

6. Because lawyers and courts were not using SECS. 4. (a) (1) and 2. (a) (b), they were finding it very difficult to prove discrimination. So, some brilliant mind conceived the concept of using the term "pretext" in stead of the word "discrimination". For a while this concept of pretext was working well But then some equally brilliant mind from out of the defense

lawyers invented the trick that whenever the plaintiffs infers pretext, "We shall simply say, "it is not a pretext" ,", like the classical example: A person says, " I know every language except Greek." Then you talk to him in Arabic, he says, "It is Greek to me." The plaintiffs finds that proving discri-mination was very difficult, but proving pretext is impossible. So, honorable Supreme Court, taking the petitioner's case as an example may pass an opinion upon the use of pretext as a tool for proving pretext. This will protect the minorities by great numbers and serve the national interest.

7. Another compelling reason will be for the Supreme Court to pass an opinion upon proof of discrimination that the defendants must demand proof of the action, The Act, rather than the evidence to infer discrimination.

XIII. RESPONSE TO COURT ORDER DISMISSING THE COMPLAINT EXH 1.

1. The petitioner's allegations are:

i. A less qualified person was hired,
ii. so the petitioner was discriminated,
iii. because of his age

2. Responses to paragraphs

(1). It is devoted to introducing the complaint.

(2). The court discusses the allegation #3, and remarks, "petitioner initially provided no evidence suggesting age discrimination" line 2. " he [petitioner] might be able to raise an inference of age discrimination" line 6.

(3). The court discusses the allegation #3, and remarks, " and petitioner has provided no evidence that age was even considered in the decision ," line 7.

(4). The honorable court discusses the allegation #3, and remarks, "Petitioner has pointed to no evidence that would suggest that his nonselection was based on his age." line 6.

(5). It dismissed the complaint by remarking, "without any evidence suggesting age discrimination petitioner's case must be dismissed." line 1.

Petitioner's brief comments:

The court has not discussed allegations #1 & #2 at all.
It seems the court has taken the position that if the petitioner cannot provide any evidence to infer age discrimination, then his discrimination was not based on his age. This position is a direct challenge to PL 90-202, SEC. 2. (b) which declares that if the respondent's decision was not based on qualifications of the candidates, then, in case of age discrimination, it must have been based on their age.

Since the court has not considered the allegation #1, it does not know whether selectee was less qualified. Therefore, it made a judgement without knowledge.
Since the court did not consider the merits of the case on qualifications of the candidates, likewise, it does not know if the petitioner was discriminated. So, again its judgement is without knowledge.

Since the court did not grant a trial, it could not consider the allegations #1 and #2 itself without a jury.

Petitioner's position:

To arrive at a just judgment the following steps may be taken:

1. By a trial it is to be determined if selectee was less qualified as alleged.

2. If he was not less qualified, the case stops here in favor of respondent.

3. If he was less qualified then it may be concluded that he was discriminated.

4. By PL 90-202. SEC. 2. (b) it may be concluded that employer's decision was not based on the candidate's qualifications. So, it must have been based on age.

XIV. S U MM A R Y

1. The respondent has used unadvertised qualifications, and placed more weight on them than on advertised ones. The district court has applied FRCP 56 (c) in a way that conflicts with the relevant decision of the Supreme Court. The pettioner was deprived of his Fifth Amendment Constitutional Rights.

XIV. CONCLUSION

1. The Fifth Ammendment to the United States Constitution provides: "No person shall be . . . deprived of life, liberty, or property, without due process of Law . . . " It has been vividly shown in Sec. IX that the respondent bypassed the due process of law. So, the petetioner's constitutional rights were violated.

The due process of law was bypassed, in addition, to what has been stated in Sec. IX as follows:

2. In this Age Discrimination in Employment Act of 1967, the petitioner's allegations were: (i) A less qualified person was hired, (ii) so, he was discriminated, and (iii) because of age. The court did not adjudicate the first two allegations, even did not address them . The court adjucated the third allegation by the order that there was no evidence to infer age discrimination.

3. Let us constitute a model of a crime for example of a murder. The elements to establish a murder are: (a.). the action, the alleged murder, (b) a person who has been alleged for the murder, (c) the evidence that the murder has ocurred and the evidence that the alleged person was the murderer.

4. In the case of discrimination, the elements are: (a) the action, the allegation that a less qualified person was hired, (b) the action was a discrimination, © the discrimination is unlawful, (d) be cause of age.

5. In the case of murder the element (a) is established by the dead body produced, (b) by witnesses. In the case of discrination element (a) is established from the resumes of the candidates and by expert witnesses. Element (b) is established by the first segment of PL 90-202, SEC. 4, (a) (1) which says

"to fail to hire . . .or therwise discriminate ... "

So, fail to hire is discrimination. It is established by law. No evidence necessary. Element (c) is established by PL 90-202, SEC. 4. (a) (1) which says,

> "It shall be unlawful for an employer . . . otherwise discriminate any individual ... , because of such individual's age;"

6. Element (d) is established by PL 90-202, SEC. 2. (b). which says that if the employer's decision was not based on qualifications, but on age, then the applicant was discriminated because of his age. So, No evidence is necessary.

7. But the court did not comply with the applicale laws. So, the petitioner was deprived of his Fifth Amendment Constitutional rights.

WHEREFORE, this humble petitioner prays and hopes that the mighty and honorable Supreme Court accept and review the petitioner's complaints and make a fair, speedy and just Judgement and take actions accordingly.

Most respectfully submitted,

Abdul Aziz Date prepared: 01 08 1998

Abdul Aziz, Ph.D., Petitioner pro se, 9179 Springhill Lane, Greenbelt, MD 20770-1245. Phone: 301-513-9164/ 0453